

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

Public Teleconference Meeting September 24, 2009



Meeting Summary

Approved:

Handwritten signature of Elizabeth Yeampierre in blue ink.

Elizabeth Yeampierre
NEJAC Acting Chair

Handwritten signature of Victoria J. Robinson in black ink.

Victoria J. Robinson
NEJAC Designated Federal Officer

A Federal Advisory Committee of the U.S. Environmental Protection Agency

* www.epa.gov/compliance/environmentaljustice/nejac/

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL
Public Teleconference Meeting
September 24, 2009

The Executive Council (Council) of the National Environmental Justice Advisory Council (NEJAC) convened for a three-hour public teleconference meeting on September 24, 2009. The meeting included a Public Comment period. This document summarizes presentations to the Council, discussions among Council members and community concerns expressed during the Public Comment period. The meeting focused on national enforcement and compliance priorities of the U.S. Environmental Protection Agency (EPA or the Agency).

The NEJAC is a Federal advisory committee that was established by charter on September 30, 1993, to provide independent advice, consultation and recommendations to the EPA Administrator about matters related to environmental justice. The NEJAC is governed by the provisions of the October 6, 1972, Federal Advisory Committee Act (FACA). The Council is currently comprised of 21 members representing academia, business and industry, community-based organizations, non-governmental and environmental groups, state and local governments, tribal governments and indigenous organizations. One EPA staff member serves as the Designated Federal Official (DFO) for NEJAC. Exhibit 1 lists the members of the Executive Council who participated on the teleconference call, as well as those who were unavailable for the meeting.

This summary contains the following four sections, which generally correspond to the meeting agenda:

1. Welcome and Opening Remarks
2. Discussion of EPA's National Enforcement and Compliance Assurance Priorities
3. Public Comment
4. Concluding Remarks

1.0 Welcome and Opening Remarks

Ms. Victoria Robinson, NEJAC Designated Federal Officer (DFO), EPA Office of Environmental Justice (OEJ), welcomed all participants to the 29th public meeting of the NEJAC. She acknowledged the dedication and volunteer efforts of the Council members and their willingness to serve and continue the work of the NEJAC, which recently

celebrated its 15-year anniversary. She also thanked the members of the public who were listening and those who would be providing comments during the meeting. She said that more than 180 people had registered for the call, and more than 25 people had signed up to provide public comments. In addition, NEJAC members and three speakers were participating. Ms. Robinson acknowledged the historic nature of the meeting, noting that the strong participation reflected the importance and relevance of integrating an environmental justice perspective into the Agency's national enforcement agenda. She also noted that the call was being recorded to create the first Podcast of an EPA FACA. She said the audio podcast would be posted along with a written transcript and summary of the meeting on the NEJAC website. *

Ms. Robinson noted that Mr. Richard Moore, Chair of the NEJAC and Executive Director of the Southwest Network for Environmental and Economic Justice, was unable to participate in the

Exhibit 1
NEJAC Executive Council Members
<i>Members in Attendance</i>
Ms. Elizabeth Yeampierre, Acting Chair
Ms. Victoria Robinson, DFO
Mr. Don Aragon
Ms. M. Kathryn Brown
Ms. Sue Briggum
Mr. Peter Captain, Sr.
Ms. Jolene Catron
Ms. Deidre Sanders, <i>on behalf of Mr. William Harper</i>
Mr. Hilton Kelley
Mr. J. Langdon Marsh
Mr. Shankar Prasad
Mr. John Ridgway
Ms. Patricia Salkin
Mr. Omega Wilson
<i>Members Not in Attendance</i>
Mr. Richard Moore, Chair
Mr. Chuck Barlow
Ms. Wynecta Fisher
Ms. Jodena Henneke
Mr. Christian Holmes
Mr. Gregory Melanson
Mr. Paul Mohai
Mr. John Rosenthal

teleconference. She announced that Ms. Elizabeth Yeampierre, Executive Director of UPROSE, Inc., Brooklyn's oldest Latino organization, would serve as NEJAC Acting Chair for the meeting. Ms. Yeampierre is a lawyer by profession and has been a member of the NEJAC for almost three years.

Ms. Yeampierre welcomed everyone in attendance. She noted that the issue of EPA enforcement "speaks to the heart of environmental justice" in all communities because it addresses how environmental laws are enforced to protect vulnerable communities. She also emphasized the importance of community involvement, stating that the tenets of environmental justice pertain to "how we speak for ourselves." She encouraged members of the public to be involved in shaping the priorities that would guide the work of EPA and NEJAC in the following years, adding that "it's never too late" for people to provide their input.

Mr. Aaron Bell, EPA OEJ, conducted a roll call to confirm that enough members were present to establish a quorum (see Exhibit 1). Ms. Robinson confirmed that a quorum had been reached, and the meeting could proceed.

Mr. Charles Lee, Director, EPA OEJ, thanked everyone for their time and participation. He acknowledged that Mr. Moore was in poor health but sent his regards. He reiterated EPA Administrator Lisa Jackson's commitment to transparency in the Agency, which, he reflected, meant proactively reaching out to engage all stakeholders, particularly those who were historically underrepresented in the EPA decision-making process, in addition to making information available and accessible to the public. Mr. Lee emphasized that the teleconference meeting was setting precedent by allowing EPA to engage with the public to develop a set of national enforcement priorities. He stated that this process would ultimately lead to better environment results and help EPA achieve its goal of integrating environmental justice into all of the Agency's programs.

2.0 Discussion of EPA's National Enforcement and Compliance Assurance Priorities

Mr. Lee introduced Ms. Cynthia Giles, Assistant Administrator of EPA's Office of Enforcement and Compliance Assurance (OECA). He noted that Ms. Giles, who oversees OEJ in her current capacity, was formerly the Vice President and Director of the Conservation Law Foundation's Rhode Island Advocacy Center, where her work focused on state and regional advocacy to combat climate change. From 2001 to 2005, she headed the Bureau of Resource Protection at the Massachusetts Department of Environmental Protection, he explained, adding that from 1995 to 1997, she was Enforcement Director for Region 3 and developed a "results-targeted" approach to enforcement, which she has since published in a paper written for OECA. Mr. Lee added that as OECA Assistant Administrator, Ms. Giles' responsibilities include overseeing enforcement of federal laws regulating toxics and protecting air, drinking water and surface water. She also chaired a regional ozone compliance initiative, developing strategies for reducing smog-causing emissions from stationary sources. Prior to joining EPA, Ms. Giles was an Assistant United States Attorney, where she prosecuted violations of federal environmental laws, said Mr. Lee. Continuing, he noted that she holds a BA from Cornell University, as well as a JD from the University of California at Berkeley and an MPA from the Harvard University Kennedy School of Government. Since coming to the EPA, Ms. Giles has been leading development of the 90-day action plan for the Clean Water Act., he concluded.

Ms. Giles expressed her appreciation for the NEJAC holding the special meeting to help EPA determine which areas of enforcement deserved attention. She referred to her meeting with the Council during its three-day session in July 2009 in Arlington, Virginia. She reemphasized the importance of transparency in the Agency and meaningful involvement by members of the public, particularly from underrepresented communities. She also reminded listeners that OECA was engaged in other work in addition to the actions listed as national priorities, including environmental justice.

2.1 Overview of National Enforcement and Compliance Priorities Selection Process

Mr. David Hindin, Deputy Director of EPA's Office of Compliance, delivered a presentation about the Agency's 2011-2013 national enforcement and compliance priorities. He indicated that EPA sets priorities every 3 years for the following purposes:

- To identify the most significant environmental problems
- To focus EPA's attention on a limited set of top priorities
- To measure progress achieved toward specific goals

Mr. Hindin presented five factors upon which the selection of national enforcement and compliance priorities are based:

1. Significance of the environmental problem
2. Risks posed to human health
3. National scope or prevalence in many areas
4. Existence of frequent, ongoing violations of Federal environmental laws
5. Conditions suggest the scope and severity of the problem are best handled by the Federal government (i.e., EPA)

He noted that national priorities were not intended to replace the priorities of state or local governments.

Mr. Hindin provided several examples of current national enforcement and compliance priorities:

- Water priorities include Concentrated Animal Feeding Operations (CAFO), which are farms that produce large quantities of animal waste from cattle, poultry, swine and dairy operations; old sewer systems that result in Combined Sewer Overflows (CSO) and Separate Sanitary Overflows (SSO); and storm water problems, such as runoff from construction activities or industrial facilities.
- Air priorities consist of power generation facilities and cement, glass and acid-producing facilities that are subject to New Source Review/Prevention of Significant Deterioration (NSR/PSD) due to changing or expanding their building design; and air toxics.
- Waste priorities include mineral (e.g., phosphoric acid) processing facilities; and financial assurance, to ensure that facilities set

aside adequate funding to respond to accidents and safely close sites. Mr. Hindin noted that the economic downturn posed a challenge for those firms offering financial assurances.

- Multimedia priorities in Indian Country address drinking water quality, waste management, and tribal school environmental quality. Mr. Hindin said that the role of the States in addressing these priorities had been limited, with few exceptions, and that the tribes have the responsibility of addressing them.

Mr. Hindin explained that, through Fall 2009, EPA would be in the process of gathering input from the public, states, tribes, and associations about national priorities for 2011-2013. In Winter 2009-2010, the proposed issues would be analyzed based on the five factors described above, he continued, adding that the final set of priorities would be announced in the Federal Register and national program guidance. Mr. Hindin invited public input on the priority selection process. He posed the following questions for the NEJAC and members of the public to consider:

- What are the most important environmental problems?
- Why are these environmental challenges the most important from your perspective?
- Is this a problem that can be solved with enforcement or improved compliance?

As a follow-up to the third question, Mr. Hindin emphasized the need for an enforcement or compliance "hook," or aspect, to the issues.

Mr. Hindin reported that, in September, the Agency launched an online discussion forum or blog, <<http://blog.epa.gov/enforcementnationalpriority>>, to facilitate stakeholder input about EPA priorities for 2011 through 2013. Specifically, he noted, EPA is inviting public comments about the following topics:

- EPA's selection criteria for priorities
- Suggestions for future environmental priorities
- Providing information for public use

Mr. Hindin stated that comments to this blog were somewhat moderated to screen out inappropriate wording. He assured blog contributors, however, that comments may not immediately post but

would appear in their entirety as long as they were not offensive. He stated that the first public comment period would run through September 30, 2009, and another opportunity for comments would begin later in the Fall and close on December 1, 2009. Mr. Hindin explained that an announcement about EPA seeking the next round of formal comments would be published in the Federal Register in Fall 2009.

2.2 Regional Perspective on National Enforcement and Compliance Priorities

Ms. Robinson introduced Mr. Alan Walts, Acting Director, EPA Region 5 Office of Enforcement and Compliance Assurance. In Region 5, Mr. Walts is responsible for coordinating the enforcement and stewardship program, and managing the National Environmental Policy Act and Environmental Justice programs. From 1996 to 2007, Mr. Walts served as a staff attorney in the region's Office of Regional Counsel, Ms. Robinson concluded.

Mr. Walts provided a regional perspective about the importance of the national enforcement priorities and presented examples to highlight the value for communities and opportunities for community involvement. He reemphasized the point raised earlier by Ms. Giles about EPA – and its Regional offices – doing more than just focusing on national enforcement priorities. He said that each Regional Office, in coordination with the states, has its own enforcement program. He encouraged communities to work with EPA's Regional offices about enforcement issues that may not rise to the level of national enforcement priorities.

Mr. Walts described the benefits of a regional focus on national enforcement priorities. As an example, he noted that EPA Region 5 was able to achieve a pollution reduction of 963 million pounds in 2008, 99 percent of which came from efforts related to the Agency's national enforcement priorities cases. He added that 178 million pounds of that reduction came from NSR/PSD and petroleum refinery cases. On a national scale, Mr. Walts reported that approximately 82 percent of the pollution reduction in 2008 was a result of EPA's enforcement of national priority issues; 67 percent of the investments in pollution control came from EPA's enforcement actions for air and water priorities; and 27 percent of pollution reduction resulted from enforcing hazardous waste

priorities. Pointing to these statistics, Mr. Walts explained that focusing on national priorities played a significant role in providing environmental benefits last year.

In terms of health benefits, Mr. Walts acknowledged the challenge of linking pollution reduction to place-specific health benefits. However, he said that EPA's 10 largest enforcement actions for Clean Air Act violations led to \$35 billion in human health benefits. These benefits included 4,000 avoided premature deaths, 2,000 fewer emergency room visits, and 6,000 fewer cases of bronchitis. He stated that significant health results could be achieved through national enforcement priorities.

Mr. Walts presented three specific examples of successful enforcement actions that resulted from a focus on national priorities:

- The American Electric Power Settlement saved an estimated \$32 billion in health costs annually through the pollution reductions achieved. EPA leveraged pollution reductions at multiple facilities across the country. Furthermore, this success story involved collaboration between EPA, 8 states and 13 environmental citizen groups. Mr. Walts emphasized that this was a historic example of effective community involvement and citizen participation.
- At Port Arthur, Texas, in EPA Region 6, which has a large percentage of the nation's petroleum refining capacity, EPA enforcement actions resulted in a commitment of \$37 million worth of Supplemental Environmental Projects (SEP). The SEPs focused on providing opportunities for additional human health and environmental benefits for the affected community that were above and beyond the requirements to return the facilities to compliance. Mr. Walts noted that this case provided an important opportunity for community involvement in terms of SEPs to advance environmental goals that may not otherwise be achievable through full compliance.
- Enforcement action against four sulfuric acid plants in Louisiana, Virginia, Ohio, and Kentucky, resulted in a settlement that required DuPont to spend \$66 million to reduce air pollution. Specifically, air pollution from these plants was reduced by 13,000 tons

per year. Mr. Walts stated that the Agency's decision to pursue that enforcement action highlighted the particular sensitivity of children, the elderly and people with preexisting heart and lung conditions to sulfur dioxide. He noted that by focusing national priorities on issues that particularly impact vulnerable populations, EPA could achieve significant health gains.

2.3 Environmental Justice Perspective on National Enforcement and Compliance Priorities

Ms. Robinson introduced Ms. Deehn Ferris, President, Sustainable Community Development Group, Inc., and a former charter member of the NEJAC. During her tenure as a NEJAC member, Mr. Ferris served as chair of the NEJAC enforcement subcommittee for several years, explained Ms. Robinson, who also noted that Ms. Ferris also had spent 8 years at EPA as a senior member of the Agency's enforcement team.

Ms. Ferris presented an environmental justice perspective about EPA's national enforcement and compliance priorities. She thanked Mr. Lee and Ms. Robinson for the invitation to participate on the call and congratulated Ms. Giles for her new post, adding that she was excited to have a results-oriented leader in OECA. She invited everyone participating on the call to a Capitol Hill Summit on Sustainable Communities, Environmental Justice and the New Economy scheduled for October 15 and 16, 2009, at the Omni Shoreham Hotel in Washington, D.C.

Ms. Ferris stated that disproportionate environmental hazards and exposures pose unreasonable risk. Non-compliance exacerbates these risks and as a result, enforcement of all laws is paramount. She stressed that vigorous enforcement by EPA is a firm step forward toward protecting human health and the environment in distressed communities. She urged EPA to consider "resuscitating strategic enforcement initiatives," referring back to the 1980s and 1990s when strategic national enforcement initiatives focused on non-compliance in places where violations posed the most danger to human health and the environment. As examples, she mentioned proliferation of petroleum and chemical plants; and situations where communities may be experiencing chemical explosions and accidents.

Ms. Ferris stressed the importance of directing EPA's attention to and action on those areas where the Agency has discretion to act and address regulatory violations in distressed communities. She noted that as early as 1996, as part of the efforts of NEJAC, attorneys and subject matter experts had provided advice to EPA about how the Agency could use its discretionary authority – for example, under environmental statutes like the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Federal Insecticide, Fungicide and Rodenticide Act, and Toxic Substances Control Act. Ms. Ferris said that EPA has discretionary authority under each of these statutes to consider risk aggregation and social and economic impacts; and to provide data and information to affected communities to facilitate compliance on the part of regulated facilities.

Ms. Ferris also cited Title VI of the Civil Rights Act of 1964 as another important arena in enforcement. She referred to the Rosemere Neighborhood Association decision of September 17, 2009, by the Ninth Circuit Court of Appeals as an indisputable message to EPA that the practice of delay in acting on civil rights complaints is legally unacceptable. She expressed the expectation that Title VI complaints under the new Presidential and EPA administration will be processed and determined in a timely manner.

In terms of Executive Order 12898, which mandates that environmental justice be incorporated into the decision-making of 17 federal agencies, Ms. Ferris urged EPA to take action against each named agency to ensure that they comply with the Executive Order 12898 mandate.

She acknowledged the challenges of permitting and urged for decisions in favor of protecting human health and the environment and vigorous public engagement by those most affected. Ms. Ferris echoed Ms. Yeampierre's earlier statement that the democratic right for communities to be heard is a tenet of environmental justice.

Ms. Ferris also recommended regular, thorough inspections in communities where high levels of hazards and exposure exist, especially where pollution sources proliferate. In terms of penalties and the allocation of funds for SEPs, she suggested implementing processes that are

transparent and inclusive of the community. She expressed support for the use of SEPs that create economic, environmental, and social benefits for the affected community. She emphasized that the community should be involved and engaged in the process.

Ms. Ferris described risk assessment as the predicate to effective permitting and enforcement. She urged prompt action by EPA on developing cumulative risk assessment methodology that factors in multiple pollution sources. She noted that the chemical-by-chemical and facility-by-facility approach to risk assessment does not adequately protect neighborhoods, especially in places with multiple hazards and exposures.

Ms. Ferris thanked Professor Sheila Forster, Fordham University School of Law in New York City; and Professor Eileen Gauna, University of New Mexico, for their input on her remarks.

2.4 Dialogue on National Enforcement and Compliance Priorities

Ms. Robinson thanked the three speakers for their presentations and perspectives, and invited comment from the NEJAC. Highlights of the follow-up discussion are presented below.

- Ms. Yeampierre acknowledged the “tremendous job” of EPA in providing a roadmap for the national priorities selection process and expressed her support for Ms. Ferris’s proposals. She noted that Mr. Hindin’s presentation included reminders of EPA’s scope and limitations. She also emphasized Ms. Ferris’s point about EPA’s use of its discretionary power.
- Mr. Hilton Kelley, Director, Community In-power and Development Association, Port Arthur, Texas, stated that the presentations by Mr. Hindin and Mr. Walts were “right on point” and commended the efforts of EPA in this endeavor.
- Mr. Omega Wilson, President, West End Revitalization Association, asked what it meant for EPA to set “new priorities” in relation to the status and funding of existing priorities such as CAFOs. Mr. Hindin clarified that existing priorities would be evaluated as to whether they had been addressed or should be retained for the next cycle, based on the five factors he had presented earlier. He added that resources and funding would likely be maintained for those priorities that are retained.
- Ms. Sue Briggum, Vice President, Federal Public Affairs, Waste Management, Inc., added to Mr. Wilson’s line of questioning by asking how the public testimonies heard during the last NEJAC meeting in July 2009 – for example, by representatives from Mossville, Louisiana – would fit into the priority-setting process. She proposed that EPA consider making 100 percent compliance an enforcement priority for affected communities where multiple sources are located. Mr. Walts responded that, in terms of the national priorities selection criteria, EPA could shift its focus from a sector-based approach to one that examines geographic areas. He noted the importance of working with EPA Regions and states in terms of localized enforcement priorities to allow pooling of resources to address such comprehensive issues.
- Mr. J. Langdon Marsh, Fellow, Portland State University, referred to Mr. Lee’s mention of the ongoing development of the 90-day action plan for the Clean Water Act. He asked about the relationship between that effort and the selection of national enforcement priorities. Mr. Hindin responded that the 90-day Clean Water Action Plan (CWAP), which would be announced to the public in October 2009, was a separate effort from the national priorities selection process. He pointed out, however, that water issues would still be included among the national priorities and any relevant information from the CWAP would be consistently reflected in the national priorities list. When Mr. Marsh asked whether public involvement was a part of the CWAP, Mr. Hindin stated that public comments had been solicited using a similar process as the one used in the national enforcement priorities process; however, the public comment period was completed. He added that the proposals would be incorporated into the CWAP by October 2009.
- Mr. John Ridgway, Manager of the Information Management and Communications Section at Washington State Department of Ecology, asked how Ms. Ferris’s comment about risk assessments and cumulative impacts could be considered when talking about sector-based approaches instead of cumulative risk models. Mr. Hindin responded that while the existing

priorities were more sector-focused (except in tribal areas), the Agency would be interested in receiving input about cumulative risk models. He suggested the possibility of integrating exposure and cumulative considerations into the sector-based approach. He encouraged more ideas about this topic. Mr. Hindin added that concerns regarding any immediate environmental health risks in a community should be raised with the Regional Administrator, and he stressed that just because an issue may not be a "national priority" did not mean EPA was not interested.

- Mr. Shankar Prasad, Executive Fellow, Coalition for Clean Air, recommended using the Environmental Justice Strategic Enforcement Assessment Tool (EJSEAT) to explore cumulative health risks and go beyond sector-based approach. He acknowledged that EJSEAT was in the process of being refined, but it could be a useful tool in the national priorities selection process. Mr. Prasad also suggested that, as part of EPA's rule-making process, EPA consider incorporating an environmental justice component in the use of penalties levied. Mr. Hindin acknowledged that SEPs are generally designed to address the harm or environmental insult to the community affected by the violation. He noted that while EPA cannot legally take fines collected and direct them to affected communities, the Agency can use those resources to fund SEPs in those communities. Mr. Prasad followed up by asking whether EPA could dedicate resources resulting from the SEP process or penalty structure to the priority areas identified for each of the states. Mr. Hindin responded that SEPs must benefit the affected community. Ms. Ferris noted the lack of transparency and the importance of including communities in deliberations about SEPs in terms of where and how they are delivered. Mr. Kelley added his observation that industries, rather than the affected communities, often have a stronger say in who benefits from the SEPs.
- Ms. Jolene Catron, Executive Director, Wind River Alliance, asked how EPA had reached out to tribes and solicited feedback about the national priorities selection process. Ms. Lisa Raymer, Planning Team Leader, OECA, explained that EPA had contacted tribes, including those in Alaska and native villages, through the Regional Operations Committees

and with letters, inviting them to provide comments. Ms. Catron noted that while tribes are sovereign governments with their own tribal environmental agencies that oversee environmental quality for their respective reservations, those agencies often do not have a "treatment as a state status" from EPA.

2.5 New American Bar Association Committee on Diversity and Environmental Justice

Ms. Robinson introduced Mr. Quentin Pair, Environmental Justice Coordinator for the U.S. Department of Justice (DOJ), who spoke about the newly created Diversity and Environmental Justice Committee of the American Bar Association.

Mr. Pair began by stating that Mr. John Cruden, Deputy Assistant Attorney General for the Environmental Resources Division at DOJ, who had developed a great interest and support for environmental justice at DOJ, had been elected to chair the American Bar Association's Environment and Energy Section in August 2009. Mr. Pair reported that Mr. Cruden had selected Mr. Pair, Mr. Benjamin Wilson, Managing Partner of Beveridge & Diamond and past member of NEJAC; and Mr. Nicholas Targ, Partner, Holland and Knight, and former OEJ staff member, to co-chair the new committee.

Mr. Pair encouraged the participation of lawyers interested in environmental justice in the activities of the committee. He announced that the task force had recently completed an update of the 4th edition of *Environmental Justice For All: A 50-State Survey of Legislation, Policies and Initiatives*, a report that will be released soon. He added that the effort involved collaboration between the American Bar Association and the Hastings Law School in California. He said the findings provided an "overview of what's going on throughout the country."

Mr. Pair also noted that DOJ was promoting scholarships to law school students for summer internships that would provide opportunities to expose them to environmental justice issues. He committed to exploring ways to extend those scholarships to environmental justice grassroots groups and lawyers engaged in environmental justice work. He invited interested parties to contact him directly via e-mail at

<Quentin.pair@usdoj.gov> or by phone at (202) 514-1999.

3.0 Public Comment

Mr. Yeampierre began the Public Comment Period by stating that the Council wanted to hear public input about EPA's national enforcement and compliance priorities. She listed several different ways that people could get involved, including attending the in-person meetings of the NEJAC, listening to the Podcast of the teleconference meeting and reading and contributing to the EPA national enforcement priorities blog.

Ms. Robinson reported that 22 people had signed up to provide verbal comments, and several individuals had also submitted written comments that would be distributed to the Council members. She noted that written comments received would also be incorporated into the transcript of the teleconference call for public viewing.

Ms. Glenn Pratt, Indianapolis Chapter, National Association for the Advancement of Colored People (NAACP), expressed concern that the State of Indiana had eliminated its function to address environmental justice. Ms. Pratt stated that one of the national issues of concern is nutrients, and cited the Chesapeake Bay as an area that is experiencing this problem. She noted, however, that nutrients are "not on the drawing board" in Indiana. Ms. Pratt urged EPA to be more aggressive with the States. She said that Indiana had cut federal funding of all its air pollution programs, which would put the State into non-attainment status. She expressed hope for the return of EPA "with a backbone."

Mr. Stephen Brittle, Don't Waste Arizona, Inc., suggested that EPA, which provides compliance assistance and training for polluters, should offer the same to affected communities. He added that EPA should implement a process that allows communities to appeal to EPA about enforcement issues. Mr. Brittle cited the example of Fisher Sand and Gravel, and said he had written a letter to the Region expressing concerns about that site but had not yet received a response. He noted that the facility had been issued almost 200 letters of violation but has not been closed down. He accused state and local governments of corruption and urged EPA to step in and enforce the laws.

He expressed disappointment that EPA had not done more.

Ms. Jan Whitefoot, Concerned Citizens of the Yakama Reservation in Washington, said that her area is known as "Mad Cow County" with the highest diarrhea and asthma rates in the state. She said the Yakima Valley has over 72 unregulated CAFOs, most of which have no legal permit to operate. She noted that they are experiencing a drinking water crisis. She said a friend had 6,000 parts per million (ppm) of fecal coliform inside their home. Ms. Whitefoot noted that the federal air regulations for the area only addressed burning barrels, and agricultural issues were exempt. She reported that the farms were burying dead cows where the water table was only 4 feet deep and spraying manure that sometimes drifts as far as 10 miles. She said there was no enforcement of National Pollutant Discharge Elimination System (NPDES) permits or nutrient management plans, and argued that the problem is known but ignored by the state, county, Department of Ecology, and health departments. She urged EPA to get involved by conducting point source pollution tests and regulating farm waste as industry discharges. Mr. Ridgway responded that he would call Ms. Whitefoot to follow up, noting that jurisdictional confusions exist between Yakima County and Yakama Reservation.

Ms. Tennie White, TroubleShooters, Inc., in Mississippi, spoke about pollution by the chemical company Kerr-McGee. She stated that remediation strategies approved by EPA Region 4 and local officials had allowed dangerous exposures to the communities of Hattiesburg and Columbus, Mississippi. She reported that both towns have infant mortality rates "equal to third world countries," at a rate of 10 infant deaths per 1,000 live births, compared to the national average of six. "This company is killing our babies," Ms. White said, and she asked when these communities could expect fair and equal treatment under the regulatory process, and what they could do when the process failed. She noted that residents received one response from local officials only after a complaint was sent to EPA Administrator Jackson. Mr. Kelley expressed a shared frustration about the issue but expressed confidence in a "new EPA" under the administration of President Barack Obama. He said he was hopeful about change under the new EPA Administrator.

Ms. Anhthu Hoang, General Counsel for WE Act for Environmental Justice in New York City, urged EPA to direct funding to affected communities through SEPs and environmental benefits funds. She acknowledged that EPA had specific policies about how SEPs were to be set up and spent, but she noted the importance of developing creative ways to address environmental issues that are facing communities.

Ms. Kathy Andria, American Bottom Conservancy, introduced her organization as working to protect the southwest Illinois metropolitan area at the American Bottom floodplain of the Mississippi River. She urged EPA to categorize its national priorities in terms of cumulative risk areas. She described her area as being in non-attainment for ozone and fine particulates, with a hazardous waste incinerator located in the center of an urban community. She said there was also a steel mill, coke plants, and cement kilns – among other polluting facilities – and four Superfund sites in the vicinity. Ms. Andria said that a 6.7 magnitude earthquake along the New Madrid Fault has been forecasted to likely occur in the next 50 years, which would be devastating to the area when pollution gets discharged into the water. She described the population of her community as “low income black, white, latino and mixed” in a floodplain with high asthma rates, especially among children. She noted that rates of heart and lung disease were also high. Ms. Andria welcomed the new EPA administration and its commitment to environmental justice. She recommended that EPA include coal waste and coal combustion waste in its cumulative risk assessments. She expressed a desire to help EPA better understand her community and work jointly with the Agency to protect her community’s air, water and land. In response, Mr. Marsh requested that the NEJAC discuss using life cycle science as a means to assess impacts. Ms. Robinson acknowledged that as an agenda item for the next meeting of the Council.

Reverend Steve Jamison, Maranantha Faith Center in Columbus, Mississippi, spoke about the affects of the Kerr-McGee/Tronox facility on his community. He noted that under the present EPA administration, his community had received more information and witnessed more activity related to the facility in previous three months than in the 10

years under former administrations. Reverend Jamison noted the discovery of a creosote-contaminated ditch belonging to Kerr-McGee that ran through his organization’s property, resulting in 10 years in the courts with the chemical company. He commented that the court system “seems to be working with the perpetrators.” He reported that his city experiences high rates of infant mortality and kidney disease. He referred to a 7-year study by the Agency for Toxic Substances and Disease Registry (ATSDR) that purportedly said there was no risk, but when the community requested documentation of ATSDR findings, there was no response. He added that he had been unable to obtain information about drinking water conditions in the area from ATSDR or the Center for Disease Control (CDC). Reverend Jamison asked how the DOJ and EPA work together to stop the courts from helping the perpetrators in this case. Ms. M. Kathryn Brown, Research Assistant Professor in the Department of Environmental Health, University of Cincinnati College of Medicine, expressed interest in the connection between DOJ and EPA about such issues. Ms. Yeampierre agreed that the interagency relationship should be further explored at the next Council meeting.

Mr. Will (Bob) Collin, Environmental Justice Task Force in Oregon, raised concerns regarding field burning. He reported that while a ban on field burning was being enforced in white communities, it was not being enforced in environmental justice communities. He recommended that EPA consider civil rights laws as they apply to communities as part of the priority-setting process. Mr. Collin also asked whether cultural competency would be a criteria in the selection of the next Director of EPA Region 10. At the request of Ms. Yeampierre, Mr. Collin agreed to submit written comments about these issues.

Ms. Marsha Monestersky, Forgotten People of the Navajo Nation, reported that there are more than 580 abandoned uranium mines on the Navajo reservation. She said about 75 percent of Navajo people obtain water from unregulated sources, roughly 10 percent of which exceed the groundwater maximum contaminant levels for heavy minerals including uranium. She reported that more than 30 percent of Navajo people do not have access to regulated water, compared to 12 percent of all tribal populations across the United States and 0.6 percent of the United States population as a whole. She stated that for 40

years, the communities of Black Falls, Box Springs and Grand Falls have been drinking arsenic- and uranium-contaminated water without knowing it. Ms. Monestersy said that the communities were experiencing a high incidence of brain and stomach cancers, heart disease and a condition known as "Navajo neuropathy," a rare genetic disease that kills young children. She reported that in the United States, Native Americans are 25 percent more likely to depend on water hauling than the general population, and this increases to 66 times on Navajo Nation. She said that the negative health consequences of the legacy of uranium contamination are disproportionately borne by one of most disadvantaged minorities in the nation. She urged for proactive efforts to extend EPA's focus to include the entire network of supply, distribution and storage of drinking water. Ms. Monestersky said an emergency meeting was scheduled for September 25 in Box Springs to discuss these environmental health issues, however, no one from EPA was expected to attend.

Ms. Shawna Larson, Chickaloon Tribe in Alaska, commented that, based on the previous public commenters, it "sounds like we're competing at an Oppression Olympics." She asked that EPA start clearly communicating that the Agency was not created to protect human health. She noted that community organizations expect that of the Agency, but that EPA repeatedly stresses that non-governmental organizations have to go to Congress and the Agency cannot advocate. Ms. Larson stated that until there is a constitutional amendment to protect the environment, industries would have the most power. She urged for a more honest dialogue about how to address these serious issues.

Mr. John Sullivan, speaking as a private citizen from Galveston, Texas, recommended that EPA get more actively involved in the enforcement responsibilities that were turned over to the states during the Reagan years. He said he understood that EPA cannot get involved in state legislative affairs, but the Agency could provide information to non-governmental and community-based organizations that influence legislators in their decision-making. Mr. Sullivan also commended EPA for issuing the recent request for application (RFA) for measurement models of cumulative risk that can be admissible in permit hearings. He agreed that "hard quantitative science", in addition

to personal testimonies was required in the courts. He also urged EPA to use tools like EJSEAT that have already been developed.

Mr. Sherri Jones, President, Forrest County Environmental Support Team, expressed his concern about the lack of community representation and the failure of EPA and local Mississippi Department of Environmental Quality (MDEQ). He referred to Reverend Jamison's earlier testimony about the community's suffering over the past 10 years as a result of pollution from Kerr-McGee and the assertion that local and state agencies have protected and assisted perpetrators. He asked for DOJ to get involved. He shared his e-mail address <Sjfcest48@yahoo.com> and asked for e-mail addresses of EPA and DOJ staff to whom he could forward recent letters from the City of Hattiesburg, Forrest County Board of Supervisors, and District Attorney, all of which recognize the importance of reviewing his community's case. Mr. Jones said his community faces a civil rights issue. Mr. Kelley urged Mr. Jones and the other public commenters to continue requesting assistance from EPA, saying that EPA Administrator Jackson and President Obama are serious about "stepping up to right the wrongs..." Mr. Kelley encouraged communities to seek legal advice and use litigation to fight companies who are engaged in illegal activities, adding that communities should "keep fighting." Mr. Jones asked DOJ and EPA to get more involved in his community, adding that litigation will not get things done in the State of Mississippi.

4.0 Concluding Remarks

Ms. Yeampierre thanked everyone for their time, patience, and commitment to addressing issues of environmental justice. She said that it would be "difficult to turn around a legacy of injustice" but noted the strength and integrity of the people involved in this work. She acknowledged the efforts of EPA Administrator Jackson, Ms. Giles, Mr. Lee and Ms. Robinson. She encouraged participants to send in their recommendations, noting the preference for feedback in writing to promote accountability.

Ms. Robinson encouraged participants to visit the NEJAC website* to access the audio podcast, written meeting summary, and transcript, which would be posted sometime after the meeting.

APPENDIX A

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL Public Teleconference Call September 24, 2009

LIST OF ATTENDEES

First Name	Last Name	Organization
Linda	Aldrich	Citizen
Mustafa	Ali	EPA OEJ
Kathy	Andria	American Bottom Conservancy
Don	Aragon	NEJAC member
John	Armstead	EPA Region 3
Shirley	Augurson	EPA Region 6
Jane	Barrett	University of Maryland School of Law
Reginald	Barrino	EPA Region 4
Keith	Bartlett	EPA
Samantha	Beers	EPA Region 3
Aaron Levar	Bell	EPA OEJ
Rosanna	Beltre	EPA OEJ
Kris	Benson	Alaska Dept of Transportation and Public Facilities
Charles	Blockside	Blank Rome LLP
Robin	Bravender	Greenwire
Amy	Braz	EPA Region 1
Sue	Briggum	NEJAC member
George	Brilis	EPA ORD
Stephen	Brittle	Don't Waste Arizona
M. Kathryn	Brown	NEJAC member
Kathleen	Burns	Sciencecorps
Peter	Captain Sr	NEJAC member
Nora	Carreras	Pennsylvania Dept of Environmental Protection
David	Case	Environmental Technology Council
Heather	Case	EPA OEJ
Jolene	Catron	NEJAC member
Will	Collin	Oregon Environmental Justice Task Force
Terrence	Conway	General Motors Company
Michael	Costagna	EPA Region 1
Kristen	Day	Connecticut Dept of Public Health
Carol	Dennis	OMB
Peter	DeRossi	Foth Infrastructure & Environment LLC
Pauline	Devoe	EPA Region 3
Shantray	Dickens	North Carolina State Dept of Transportation
Kris	Dighe	U.S. DOJ
Katie	Edwards	Clean Air Council
Christine	Eppstein Tang	Smithfield Foods
Jonathan	Essoka	EPA Region 3
Carlos	Evans	EPA OECA
Linda	Falk	EPA Region 6

First Name	Last Name	Organization
Deeohn	Ferris	Sustainable Community Development Group, Inc,
Leslie	Fields	Sierra Club
Tim	Fields	Michael D Baker, Inc.
Robert	Fronczak	Association of American Railroads
Mike	Fusco	Safety-Kleen Systems, Inc.
Audrey	Gaines	City of Bridgeport Health Dept
Brad	Garness	Alaska International Tribal Council
Laura	Gentile	EPA OECA
Cynthia	Giles	EPA OECA
Devin	Gladden	U.S. DOJ
Beth	Gotthelf	Butzel Long Stoneridge West
Cristine	Guitar	EPA OEJ
David	Hahn-Baker	Community Action Organization of Erie County
Stephanie	Hall	Valero Energy Corp.
Barbara	Harper	Confed Tribes Umatilla Indian Reservation
Reginald	Harris	EPA Region 3
Zoe	Heller	EPA Region 9
David	Hindin	EPA OECA
Anthu	Hoang	WE ACT for Environmental Justice
Carlota	Hopkins-Bau	Husch Blackwell Sanders
Myra	Immings	Federal Transit Administration
Fred	Jenkins	EPA OPPTS
Jenny	Johnson	INSIDE EPA
Reece	Johnson	U.S. DOJ (intern)
LeAnn	Johnson-Koch	DLA Piper
Ethan	Jones	Valero Energy Corp.
Sheri	Jones	Forrest County Environmental Support Team
Hilton	Kelley	NEJAC member
Michelle	Kelly	EPA OEJ
Cathleen	Kennedy	EPA Region 3
Shawn	Kimmel	Center for Community-Driven Policymaking
Monica	Kirk	EPA Region 10
David	Konisky	University of Missouri, Truman School of Public Affairs
Robert	Kuehn	Washington University School of Law
Shawna	Lawson	Chickaloon Tribe; and Pacific Environment Company
Charles	Lee	EPA OEJ
Matthew	Lee	EPA Region 3
Catherine	Leslie	New York State Department of Transportation
Janice	Lewis	EPA Region 3
Sheila	Lewis	EPA OEJ
Linda	Longshore	Safety-Kleen Systems, Inc.
Jennifer	Lynette	EPA Office of Research & Development
Fabian	Macias	Albuquerque Environmental Health Department
Lorena	Marez	New York Lawyers for the Public Interest
J. Langdon	Marsh	NEJAC member
Peter	Marsters	Woodrow Wilson International Center
Joyce	Martin	American Assn on Intellectual and Developmental Disabilities
Karen	Martin	EPA Region 4
Kathleen	McKinney	PRR Inc.
John	Mead	Institute for Tribal Environmental Professionals

First Name	Last Name	Organization
Ellen	Mee	Ohio Environmental Council
Chandra	Middleton	Citizen
Jeff	Miller	Citizen
Teresa	Mills	Buckeye Environmental Network
Lisa	Milner Hammond	EPA OEJ
Marsha	Monestersky	Forgotten People
Brian	Montag	K & L Gates LLP
Jacqueline	Morrison	EPA Region 3
Althea	Moses	EPA Region 7
Mary	Munn	Fond du Lac Reservation
Jasmin	Muriel	EPA OEJ
Sharon	Murray	EPA Region 9
Maribelle	Nicholson-Choice	Greenbar Tarric Law Firm
Jonathan	Nwagbaraocha	Enhesa Inc.
Eva	O'Brien	Fulbright & Jaworski LLP
Srikanth	Paladugu	Bernalilo County Office of Environmental Health
Art	Palomares	EPA Region 8
Nikos	Pastos	Center for Water Advocacy
Charlie	Patton	Regina Villa Associates
Arati	Pavathi	EPA OEJ
Kate	Pawasarat	Washington University
Cynthia	Peurifoy	EPA Region 4
Karen	Pierce	BVHP Health & Environmental Assessment Task Force
Shankar	Prasad	NEJAC member
Glenn	Pratt	NAACP Central Indiana, and Sierra Club
Lisa	Raymer	EPA OECA
John	Ridgway	NEJAC member
Mary Clare	Rietz	Ohioans for Health, Environment and Justice
Victoria	Robinson	EPA OEJ
Suzi	Ruhl	EPA OEJ
Thomas	Ruiz	New Mexico Environment Dept, Border/EJ Liaison
Charlotte	Runnels	EPA Region 6
Connie	Ruth	EPA
Patricia	Salkin	NEJAC member
Deidre	Sanders	Pacific Gas and Electric
Dennis	Santella	EPA Region 2
Marc	Santora	EPA Office of Chief Financial Officer
Eric	Schaaf	EPA Region 2
Paula	Schwach	Federal Transit Administration
Sarah	Shipp-Parran	Ecyor
Lauro	Silva	South Valley Partners for Environmental Justice
Jessica	Silver	New York Power Authority
John	Sullivan	NIEHS Center in Environmental Toxicology
Chrisna	Tan	EPA Office of Site Remediation Enforcement
Perry	Theriot	Louisiana Dept of Environmental Quality
Tami	Thomas-Burton	EPA
Godfrey	Uzochukwu	North Carolina Agricultural & Technical State University
Alice	Walker	EPA Office of Water
Sarah	Walls	Cantey Hanger LLC
Elizabeth	Walsh	EPA OECA

First Name	Last Name	Organization
Alan	Walts	EPA Region 5
Jeri	Wechsler	J.M. Huber Corporation
Philip	Weinberg	Massachusetts Dept of Environmental Protection
Sharon	Wells	EPA Region 1
Terry	Wesley	EJ Coordinator, EPA Region 2
Tennie	White	TroubleShooters, Inc.
Jan	Whitefoot	Concerned Citizens of the Yakama Reservation
Babette	Williams	U.S. Dept of Labor
Omega	Wilson	NEJAC member
Alice	Wright-Bailey	Pennsylvania Dept of Environmental Protection
Elizabeth	Yeampierre	NEJAC member

APPENDIX B

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL
Public Teleconference Call
September 24, 2009

WRITTEN COMMENTS SUBMITTED FOR THE RECORD

Submitted by:

Will Collin, Oregon Environmental Justice Task Force

Anhthu Hoang, WE ACT for Environmental Justice

Barbara Harper, Confederate Tribes Umatilla Indian Reservation, Pendleton, Oregon

Joan Vanhala, Coalition Organizer, Alliance for Metropolitan Stability

Marsha Monestersky, FORGOTTEN PEOPLE

Michael Jacoby, Citizen from EPA Region III State of Pennsylvania

Minister Robert L. Campbell and David Caldwell, Rogers-Eubanks Neighborhood Association (RENA)

Submitted by:
Will Collin, Chair, Oregon Environmental Justice Task Force*

The Oregon EJ Task Force was established by law last year. We can be accessed via a link from the Oregon Governor's Web page. I have also published a law review article on this called "EJ in OR: It's the Law" in the Lewis and Clarke Environmental Law Review that give specific details.

We are working across 14 state natural resource agencies to establish EJ as part of cultural competency used in managerial evaluations. Using the Lee model of multiple agency collaboration, we are facilitating the incorporation of principles of EJ as part of cultural competency.

Field burning has emerged as an EJ issue in rural Oregon because it is prohibited in the 9 predominantly white, higher income counties along the I – 5 interstate corridor, but allowed, and includes more combustibles, in Eastern Oregon with a poor, higher concentration of communities of color. The state legislature will not allow DEQ to include these Eastern Oregon Counties in their field burning ban, and this is why it needs EPA enforcement.

The big picture:

The Rosemere case held last week that the EPA has evidenced a systemic failure to investigate civil rights complaints. This is in our region and I know that case.

Environmental enforcement is driven by citizen complaints, reactions, and shared observations. If the citizens most affected are most discriminated against then all environmental enforcement suffers. The most important priority for environmental enforcement is the equal treatment of citizens.

We have watched the regions get stripped of EJ revenues, programmatic support, and slashed and combined ftes. Withered and weak, these programs retract to their physical roots ,here Seattle. This withdrawal had a big impact in Oregon, causing EJ groups to collapse. The big EPA programs no longer perceive the need to include EJ components in their activities. This includes not even investigating civil rights complaints at all and just hope they go away because of marginalized nature of some of our communities. A federal court of appeals just said no. The void left by EPA in our Region was filled in Oregon by us, the OR EJTF. We do not have money, and need it for community capacity building and health mapping.

Today, the EPA Regions do not have Regional Administrators that evidence minimal necessary cultural competency. They do not evidence knowledge of complex environmental issues that confront EJ every day, such as intergovernmental relations, TAS, cumulative impacts and effects, non responsive state agencies, a failed environmental federalism, and grass roots land use. Without this knowledge, these Administrators fail in the basic mission of the EPA to protect and preserve the environment. EJ issues are ultimately environmental issues, and ignoring us will lead to more federal courts of appeals decisions that require EPA to develop civil rights procedures in its decisions. Collaboration is often a route pursued by EJ, but a recalcitrant EPA may force EJ issues into more federal courts.

Unfortunately, broader societal goals will suffer if adversarial methods are our only recourse. Sustainability cannot proceed without EJ as a priority.

I am proud of the work we have done in Oregon around EJ. We still have many challenges and need regional support from the EPA. Please contact me if you have any questions or comments. This is my personal testimony. Thank you for this opportunity, and for all the work of the NEJAC members.

*Former member of NEJAC: external peer reviewer, EJ, for EPA's cumulative risk assessment, and author of only book on EPA, *The US Environmental Protection Agency: Cleaning Up America's Act*. (2003); also *Battleground: Environment* (2 volumes) (2006); *Encyclopedia of Sustainability*, with Robin Morris Collin (3 volumes) (2009). Senior Research Scholar – Willamette University College of Law



**1988–2008:
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Environmental Protection Agency Enforcement Priorities

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Don Chen
Eric A. Goldstein, Esq.
Kerri R. Holloway

WE ACT for Environmental Justice (New York City) thanks the EPA for the opportunity to comment on the Agency's enforcement priorities. In New York City and other urban communities residents, particularly children, continue to be plagued by toxic exposures from a variety of sources; chief among these are air pollution, pesticide use, soil and air pollution from brownfields, and water pollution.

Air Pollution – Toxic air pollution come from many sources. In many communities, air pollution is generated by a small number of sources such as private industry operation such as factories. However, in some urban communities such as those in New York City, air pollution is generated by a disperse set of “smaller” sources. In Northern Manhattan, where the childhood asthma hospitalization rate is six times the national average and one out of four children is afflicted with asthma, our air is soiled by a diverse set of sources; among them are bus depots, a water treatment plant, old and poorly maintained building heating systems, and roadway emissions.

Ironically, many of the polluting facilities such as bus depots, sanitation facilities, and water treatment plants are state and city-run. Even though state and city governments are delegated policing duties and are responsible for ensuring the health and safety of all the City's citizens, these very same entities overburden our low-income communities by overwhelmingly siting polluting facilities in our neighborhoods. Further, they frequently violate federal environmental protection laws.

We hope that the agency would focus its enforcement efforts on ensuring that facility operators, particularly those operating in environmental justice communities, comply with appropriate environmental laws. Furthermore, when they are found in violation of these laws, we hope the agency would ensure that supplemental environmental projects that arise from enforcement actions would benefit the communities impacted by the violation.

Pesticide use – Pesticides, especially household, industrial rodent control, and landscaping applications, seem to be pervasively (and overly) used in our communities. We would like to see the agency develop districter regulations on governing safety requirements for pesticide applications and require more safety training applicators. The agency should focus attention on health protection for residents and park users, especially children.

Brownfields – Toxic exposure from vacant and redeveloped brownfields continue to pose a public health problem for our residents. Vacant and abandoned properties, especially former manufacturing and industrial service sites, continue to produce toxic emissions of industrial chemicals such as trichloroethylene and benzene, and redeveloped brownfields that are inappropriately “capped” allow emissions to seep into surrounding land uses, including schools, day care centers, senior citizen centers, and health service facilities, and endangers the health of the occupants. Additionally, when developers build on brownfield properties, they either do not provide information regarding potential exposures of remediation and construction activities to surrounding land users or they provide incomplete information to them. Finally, brownfields that are vacant or inappropriately remediated unnecessarily expose children to toxic substances. We hope that the agency will work to ensure that brownfields are appropriately remediated when they are being redeveloped and work to find responsible land owners where they are vacant so that children will not be exposed to their toxic contaminants.

Water Pollution – Water pollution continues to be a public health threat in our communities. Northern Manhattan is host to no less than two water treatment plants, serving a combined population of nearly 600,000 people and processing both residential and commercial uses. Our combined sewer overflow system is frequently overwhelmed by storm water runoff. On rainy days, raw sewage pours into our local waterways. This is a danger to recreational users but also to our subsistent fishermen. Finally, commercial establishments notoriously discharge illegal and toxic materials into our sewer systems; such discharges include substances ranging from cooking grease, automotive maintenance chemicals such as anti-freeze, TCE, and others. We would like to see the agency take a more active role in ensuring businesses and municipal agencies responsible for maintaining water quality comply with relevant rules and regulation.

Please contact me with questions and comments.

Anhthu Hoang
General Counsel
347-465-8495
anhthu@weact.org

Submitted by :

Barbara Harper, Confederate Tribes Umatilla Indian Reservation, Pendleton, Oregon

(not in attendance, but requested that statement be read into the record)

I will NOT be in attendance, but I would like to submit the following written statement to be read into the public record:

EJ analysis methods have never been suitable for Native American tribes, particularly in the western U.S.

There is an EJ problem in Indian Country. For example, off-reservation impacts in areas where Tribes retain rights to access and use, or in their usual and accustomed areas, may be significant, but this is frequently unrecognized and/or improperly quantified.

The Confederated Tribes of the Umatilla Indian Reservation have described a method for evaluating and quantifying disproportionate impacts under NEPA or as a stand-alone study.

The first step is to identify whose rights and resources are at the greatest risk and are most affected, rather than the conventional demographic approach. Then, we describe the eco-cultural system that pertains to the tribe and its resource interests, and describe the features, attributes, goods, and services provided by the baseline conditions of the area and its resources. Then, we have specific measures to evaluate interruptions in service flow and risks to traditional lifeways over multiple generations. Finally, we look at cumulative impacts to eco-cultural well-being, and to the subsistence eco-social and economic systems that are crucial for tribal health and well-being.

This is very different from the conventional demographics and public socio-economic evaluations that are usually done under NEPA. We hope that EPA will talk directly to tribes and their technical staff and build on methods that tribes have developed. Thank you.

Submitted by:
Joan Vanhala, Coalition Organizer
Alliance for Metropolitan Stability
2525 E. Franklin Ave.
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joan@metrostability.org

Thank you for the opportunity to have input into the EPA National Enforcement Priorities for 2011 – 2013. I am basing my comments on the experience of working with the Stops for Us coalition in St. Paul, Minnesota within the time period of 2008 -2009.

The Alliance for Metropolitan Stability is a broad coalition of 26 faith-based, social justice and environmental [organizations](#) advocating for public policies that promote equity in land use and urban development.

The Alliance for Metropolitan Stability is a member of the Stops for Us coalition which represents a total of 67 constituency-based and/or citizen participation organizations. This coalition's specific focus is to ensure that three additional Central Corridor Light Rail Transit Project stations are built to provide transit access to the environmental justice (EJ) communities along East University Avenue, St. Paul, Minnesota. This campaign is part of a larger equity strategy in response to the future development of this major transportation infrastructure investment.

Description of concerns:

1. Long-standing research documents how poor and minority communities are adversely affected by local and regional investment and planning decisions regarding transit.

We note that “long-standing research documents how poor and minority communities are adversely affected by local and regional investment and planning decisions regarding transit. Spatial and transportation inequalities are often contributing factors to persistent poverty and unemployment for low-income and minority neighborhoods.” (Equity Impact Report, David Karjanen 2007). In the specific case of the Central Corridor LRT, the local MPO planned to increase the station distance from one half mile to one mile apart within EJ communities despite the fact that these communities were also some of the most densely populated along the line. As a result the EJ communities would not only suffer from reduced transit access but would also host the four year construction phase, a future barrier to community cohesion, and the likely outcome of the gentrification of their community.

2. Inadequate data collection on environmental justice communities:

In the case of the EJ communities on the Central Corridor LRT, the MPO demographic analysis underestimated the negative impact the line will have on the minority, poor, and transit-dependent populations that live along the corridor. The MPO used data at the more aggregated block group level so that they label uninhabited blocks containing industrial areas, office buildings, the University of Minnesota, retail shopping areas, and parks as predominantly non-minority areas and or low income areas. The MPO also calculated the poverty rate using income comparisons from a very large seven county metro area delineating the entire corridor as low income. Using MPO analysis, every block in the study area was considered predominantly low income. When individual block data is available, this analysis gave the appearance of deliberately reducing the appearance of the concentration of both poverty and minority populations.

3. Lack of full and fair participation of environmental justice communities:

The MPO for the Central Corridor LRT provided many opportunities for community involvement throughout the planning process. Although resources were dedicated to community involvement, this involvement has lacked full and fair influence in the Central Corridor planning process. As was commented by Anne White, District Councils Collaborative Co-Chair and Community Advisory Committee (CAC) member in her testimony on the SDEIS, “there are several aspects of the current Public Engagement Process that we find lacking.” To illustrate this issue, she points out that the CAC has not been allowed to forward recommendations in the form of motions to the Central Corridor Management Committee, communication between CAC members has been discouraged, and there has been overall lack of responsiveness and transparency on the part of MPO’s Central Corridor staff towards specific details and concerns of the CAC. The issues and concerns of the environmental justice community were raised many times at the CAC but were never addressed or included into the project plan. It has only been through community organizing and advocacy with public officials that these issues have been given some measure of redress.

4. Inadequate mitigation measures:

We think it is also important to note the disparate contrast between the dedicated staff resources of the MPO and the formation of the Northern Alignment Steering committee¹ spent on resolving the complex issues with University of Minnesota alignment versus the lack of staff resources dedicated to resolving the complex issues of environmental justice communities along east University Avenue. The Northern Alignment Steering committee created an analysis of the alternative route of the Northern Alignment and traffic mitigation studies that included: four traffic studies, analysis of electromagnetic impacts, design criteria and an environmental analysis. Although this alignment was not selected this specific public resource investment resulted in a \$30 million mitigation package for the University of Minnesota and its surrounding area.

Due to the hard work and diligence of the Stops for Us coalition the below ground infrastructure for the three additional stations for the environmental justice community were included in the Central Corridor LRT project plan. Yet the other outstanding mitigation issues of reduction of bus service, loss of on street parking, adverse construction impacts on small businesses, over concentration of power traction stations, DBE contracting and workforce, and increasing land values have yet to be addressed in a comprehensive manner by the MPO or local governments.

We appreciate that the environmental justice communities’ concerns were noted in the EPA comments to the Central Corridor LRT FEIS stating “We recommend that the ROD include specific plans for parking loss mitigation, completion of the three proposed additional stations, and continued discussions with the Rondo² community about cumulative impacts regarding community cohesion and function.” Kenneth Westlake NEPA Supervisor, Office of Enforcement and Compliance Assurance, July 27, 2009.

Yet in the Record of Decision issued by the Federal Transit Administration it is stated “Therefore, FTA finds that the additional analysis required by the Department of Transportation Order to Address

¹ Comprised of technical representatives from University of Minnesota, Metropolitan Council, Hennepin County Regional Rail Authority, Ramsey County Regional Rail Authority, Minnesota Department of Transportation, City of Minneapolis, and City of St. Paul

² The historic African American Rondo community was displaced by the construction of I94 in 1960. I94 was constructed through the heart of a vibrant business district and economic engine.

Environmental Justice in Minority Populations and Low Income Populations, 62 Fed. Reg. 18,377, 18,380 (Apr. 15, 1997) is not required because the Project does not and will not have a disproportionately high and adverse effect on minority or low-income populations.”

Recommendations or desired outcomes:

1. Recognition of major federal transportation funded projects as a powerful investment that can cause great harm or provide great opportunity to environmental justice communities requiring increased delineation of socio-economic impacts and mitigation measures.
2. Require accurate and specific population data analysis at the census block level and income comparisons within a practical regional level.
3. Increase the influence of Community Advisory Committees for transportation projects within the local MPOs to include the power to pass resolutions and recommendations.
4. Provide local resources to assist with data collection, federal regulations, and targeted studies capacity within state human rights agency's to environmental justice communities.
5. Increase the effectiveness of the Environmental Protection Agency in relation to the Federal Transit Administration to enforce mitigation measures related to environmental justice communities.

Submitted by:
Marsha Monestersky
FORGOTTEN PEOPLE
Rob Redsteer, Executive Director
Don Yellowman, President
P.O. Box 1661
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On the Navajo Nation, about 75% of the Navajo people continue to haul water from unregulated sources. Of those sources, about 10% exceed the maximum contaminant levels in groundwater for heavy metals, including uranium. More than 30% of Navajos do not have access to regulated water. That number compares to 12% of all tribal populations across the US and 0.6% of the US population as a whole.

In light of these statistics, Forgotten People respectfully requests a discussion of enforcement mandates be conducted to ensure the provision of safe drinking water to close to 100 families in Black Falls/Box Springs/Grand Falls area in the western portion of the Navajo Nation that have been drinking uranium and arsenic contaminated water for 40-years. Two of these families are currently receiving bottled water from Superfund. This year-long provision of bottled water is scheduled to end.

Health Impact of Issue

Water hauling increases health risks. While safe supplies are available in the region, families are often accessing water from unregulated sources despite of warnings by health providers and environmental health staff.³ Up to 25 percent of the unregulated sources in the western Navajo reservation exceed drinking water standard for kidney toxicants including uranium.⁴ Livestock wells are sometimes used for drinking water despite contamination with livestock feces and urine as well as volatile chemicals.⁵

There is a clear connection between sanitation facilities (water & sewage) and Indian health. The Indian Health Service (IHS) considers the availability of essential sanitation facilities to be "critical to breaking the chain of waterborne communicable disease episodes". In addition, many other communicable diseases, including hepatitis A, shigella, and impetigo are associated with the limited hand washing and bathing practices often found in households lacking adequate water supplies. This is particularly true for families that haul water. The Indian Health Service reports that American Indian families living in homes with satisfactory environmental conditions required about one-fourth the medical services as those with unsatisfactory environmental conditions.⁶

The systems used to transport and store the water often introduce high levels of bacteriological contaminants. Dependence of water hauling for access to drinking water can be life threatening for the elderly.⁷

³ "Addressing Uranium Contamination in the Navajo Nation", US EPA, Region 9, <http://epa.gov/region09/waste/sfund/navajo-nation/contaminated-water.html>

⁴ Statement by Robert G. McSwain, Deputy Director, US Department of Health and Human Services, on The Health and Environmental Impact of Uranium Mining on the Navajo Nation before House Committee on Government Oversight and Reform United States House of Representatives, Tuesday, October 23, 2007 <http://www.hhs.gov/asl/testify/2007/10/t20071023c.html>

⁵ "Concerns About Livestock Wells". Navajo Nation EPA, <http://navajopublicwater.org/Livestock.html>

⁶ Merchant, James, "Social Impacts from the Navajo-Gallup Water Supply Project", Dornbusch Associates, Berkeley, CA, April 11, 2006

⁷ "Navajo Nation Endures Water Crisis", The Arizona Republic, posted on Arizona Small Utilities Association site, http://www.asua.org/navajo_nation.htm

Water hauling also serves to trap residents in a circle of poverty. The cost to haul water on the reservation has been estimated at \$113 per 1,000 gallons, whereas a Phoenix homeowner pays less than 70 cents for the same amount.⁸ The constant struggle to meet the most basic human need diverts the human resources needed to overcome poverty in communities where most people live below the poverty line.

Forgotten People requests a study be done of adverse health effects such as kidney disease, cancer, leukemia, liver disease, Heart disease, autoimmune disease, DNA, birth defects, diabetes and hypertension for people that live near abandoned uranium mines, have been drinking uranium and arsenic contaminated water for 40 years, live in a house that was built with contaminated material, their children play on waste piles, they drink contaminated water, from unregulated wells and eat livestock that drink contaminated water and graze on contaminated vegetation and suggested remedies.

According to a Study done by Johnnye Lewis, Ph.D., principal investigator for the DiNEH Network for Environmental Health Project and director of the Community Health Program at UNM Health Sciences Center at a briefing before the joint state Indian Affairs/Radiation and hazardous Materials Committee, residents living close to uranium mines, especially large mines are more likely to have kidney disease, hypertension, diabetes and autoimmune disease.

Also, prevalent on the Navajo Nation is Cancer, Heart disease and Neuropathy, a rare genetic disease believed to be caused by exposure to uranium from waters contaminated by old mines. Symptoms include difficulty walking, muscle weakness, loss of sensation in extremities, corneal ulcerations, and severe liver disease

Disproportionate Impact of Environmental Harm

In the United States, a Native American is 25 times more likely to depend on water hauling than the general population. On the Navajo Reservation, this increases to 66 times, and is over 100 times in the Bennett Freeze communities⁹. The negative health consequences of 50 years of uranium legacy issues on the Navajo Nation and economic consequences of this method of providing access to water are disproportionately borne by one of most disadvantaged minorities in the Nation.

In addition to uranium mines and naturally occurring uranium, between 1951 and 1958 the wind was blowing radioactive fallout from Nevada Test Site over Coconino County. A number of residents qualify for RECA compensation as "downwinders." For some people this has resulted in thyroid cancer. For others, their thyroid has just stopped functioning. If it progresses to cancer, then they will qualify for \$50,000, but no medical coverage.

The core concern leading to Executive Order 12898 was that minority populations were bearing a disproportionate burden of negative environmental impacts. Addressing this injustice will require proactive efforts to extend the focus of the EPA to include the entire network of supply, distribution, and storage upon which this population relies for its drinking water. The responsibility of the EPA does not stop at the wellheads of regulated sources, but rather must also include the access to safe drinking water actually delivered to these citizens.

Results to be achieved and how the communities will benefit:

The health issues in the communities Forgotten People serves are suffering from a lack of access to safe drinking water and sanitation. Our goal is to eliminate these impacts by providing safe access to drinking water sanitation for all families in our communities.

⁸ "Navajo Nation discusses water issues in Las Vegas", Gallup Independent, Dine' Bureau, May 12, 2007

⁹ Bitsuie, *ob. cit.*

Our organization can play a vital role in this process in many ways:

- Providing community involvement in the implementation of the solution. We can provide the outreach and education that will be necessary to make any solution work effectively.
- Providing energy and initiative. When the people in a community are fully engaged in the process, it provides a dynamic motivation to all agencies to get the job done.

The long-term goal is to provide safe access to drinking water for the families in these communities. The immediate purpose is not to collect data, but rather to identify practical and effective solutions for the problems confronting families lacking access to piped water. The data from the assessment phase will be useful in identifying and quantifying problems, and all stakeholders will then work together to transform this information into an effective action plan so that safe access to drinking water can be achieved.

Relevant environmental statutes:

Providing access to safe drinking water is mandated under international law and the US has recognized that solving this problem in Indian country is central to its fulfillment of these obligations. At the UN World Summit on Sustainable Development in Johannesburg, 2004, the EPA signed the agreement and set as its targets the reduction of American Indian and Native Alaskan households without access by 50% by 2015.¹⁰

The US was also a signatory to the UN Millennium goals, which also required cutting the number of people without access to safe drinking water by half by 2015.¹¹

The EPA has made the provision of safe drinking water one of the three priorities for Indian Country for 2008-2010.¹² It has enacted innovative new programs to assist in this effort such as Region 9's Drinking Water Capacity Clearinghouse.¹³ The Safe Drinking Water Act gives the EPA the authority to protect the public from chemical, physical, radiological, and microbiological contaminants in their drinking water.¹⁴ The EPA has set Tribal- Microbial Rules as a Compliance and Enforcement National Priority.¹⁵

The primary goal of the EPA tribal strategy is to significantly improve human health and the environment in Indian Country through building tribal capacity and direct implementation. The provision of safe drinking water is one of the three priorities outlined by the EPA Office of Enforcement and Compliance Assurance (OECA) for FY2008 - 2010.

Environmental justice is also a key goal for the EPA, which has recently been directed to conduct the first round of EJ reviews in FY 2009.¹⁶ The national drinking water safety program was explicitly directed to

¹⁰ <http://webapps01.un.org/dsd/partnerships/public/partnerships/1336.html>

¹¹ <http://www.un.org/millenniumgoals/>

¹² *Data Planning and Results, Enforcement and Compliance Assurance Priority: Indian Country*
<http://epa.gov/compliance/data/planning/priorities/tribal.html>

¹³ EPA Tribal Drinking Water Program, Region 9, US EPA, Tribal Water Protection.
<http://www.epa.gov/region09/water/tribal/tribal-sdwa.html>

¹⁴ Drinking Water Management, Tribal Compliance Assistance Center, EPA Drinking Water Management.
<http://www.epa.gov/tribalcompliance/drinkwater/dwdrinkdrill.html>

¹⁵ Enforcement and Compliance Assurance Priority: Indian Country Data Planning and Results
<http://epa.gov/compliance/data/planning/priorities/tribal.html>

¹⁶ Johnson, Stephen, "Strengthening EPA's Environmental Justice Program", USEPA, <http://www.epa.gov>

identify and improve EJ issues.¹⁷ Safe drinking water is an essential part of OECA's commitment to transparent, measurable, and accountable environmental justice in its Strategic Plan for 2006-2011.¹⁸

The EPA has also been mandated to support joint EJ efforts between EPA, academic institutes, and non-governmental groups with a shared research agenda.¹⁹ The Black Falls/Box Springs/Grand Falls safe drinking water project exemplifies how this type of partnership can deliver vital services and enable the EPA to fulfill its mandates and incorporate these priorities into their Five-Year Plan to address uranium contamination and abandoned mine lands on the Navajo Nation.

Respectfully submitted,
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¹⁷ Grumbles, Benjamin, "Clean and Safe Water, 2006-2011 EPA Strategic Plan- Charting Our Course", Office of Water, USEPA, 2006.

¹⁸ Nakayama, Granta, statement before the Committee on Environment and Public Works Subcommittee on Superfund and Environmental Health, United States Senate, July 25, 2007

¹⁹ Office of Environmental Justice 1996 Environmental Justice Implementation Plan, Enforcement and Compliance Assurance (2201A) EPA/300-R-004 April, 1996, p. 12

Submitted by:
Michael Jacoby
Citizen from EPA Region III State of Pennsylvania
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Public Comment Topic: The proposed correction to the National Data Verification problem as it pertains to inaccurate, incomplete or misleading data within the EPA database system in my opinion should now be moved to the top of the NEJAC's National Enforcement Priority list.

My public comments today are a continuation of my public comments made on July 21, 2009 along with some updated awareness information that was work in progress.

These problems have since received a lot of attention and now as an end resolve of what happened this summer throughout our nation an opportunity to quickly solve this problem now exists.

Again without question our nation is at risk from within, because... the status quo cannot continue as politicians continue their rhetoric between the Administration and Capitol Hill tearing our nation apart while failing to address the obvious which affects ALL... demographics.

To the best of my knowledge nobody has yet come publicly forward from the Energy and Commerce Committee who was responsible for oversight over the EPA to explain why they did not address these underlying issues in the past which are now becoming evident during HealthCare and other discussions that the information being supplied to the public was... and some is still... inaccurate, incomplete and misleading.

Since July's meeting I hope that the NEJAC and others were able to take some time to look into the EPA database to confirm the massive scope of this problem.

Sadly to say it now appears that we might just need some oversight, over... our OVERSIGHT COMMITTEES.

As the NEJAC may have already concluded by now, the public is presently caught in a dilemma. Who can they trust to solve this problem?

Again as I pointed out in July's NEJAC meeting a change was made to the EPA database just prior to your annual meeting. Again sadly to say upon quick review it is apparent to me that somebody forgot to do their math!

With these new changes the EPA just made it more difficult for the public who are less fortunate to quickly find the vital information that they will need to protect their family and loved ones in times of crisis.

Simply put they forgot the same thing that Capital Hill did and for those in the NEJAC who have tried for years to protect your local communities this... should outrage you!

The only thing I can say at this point in time is that this database speaks for itself!

Ladies and gentlemen the public by simply reviewing the EPA database records are discovering that this goes to the heart of some of our national Health and Public Safety problems.

Updates: In August during a five state “public” executive meeting that was held in Newark, Delaware this EPA data problem was brought to their Executive Committees attention and this time it was by another well respected individual who looked at the EPA database information for his local area and quickly realized that we have a very... big problem looming out there!

Later on September 1, 2009 I received a response to a request that I made earlier to an individual who presently holds a position that falls under the umbrella of the Department of Homeland Security and asked if they would take a good look at some information that was recently published.

Those involved in the review of this information were from the National Fire Programs Division, National Fire Data Center that falls within the United States Fire Administration and after a thorough review and discussion by staff they concluded that this issue... is an Environmental Protection Agency function.

I am bringing this to the NEJAC’s attention just to tell you that this Federal Administration has already confirmed that this function falls within the EPA’s domain.

As the nation slowly wakes up to this national problem a woman with her young daughter recently stopped me after a public gathering where HealthCare issues were on the minds of many and she looked directly at me and said “the TRUST is GONE” which should explain to many why the nation is so upset!

When Lisa Jackson personally told me that we need... the information, my response would be to her if... she is listening today, then... let’s make sure that the EPA information is accurate, updated and not misleading!

Unless I'm mistaken which the NEJAC can confirm doesn't the EPA database fall with in her domain?

My question to the NEJAC committee today is... now that the challenge has been made by certain members of Congress who believe that the public outrage that some are seeing is racially motivated should the media as suggested be contacted so that they can start their investigation to see if racism is a factor?

As I mentioned, the greatest fear voiced by others in the past was that our electronic gateway to public health and safety information to protect our communities “EGATE” would be turned into a political issue.

Over the summer did this just happen in front of everybody's eyes?

In my opinion: If our President really wants to implement an unprecedented amount of transparency and accountability as he promised our nation many times, this would be a perfect time and place for him to start addressing this Federal Informational Data system deficiency.

Again... thank you for giving me the opportunity to bring this updated information to your attention and please consider my request to move this Data Verification problem to [the top of NEJAC’s National Enforcement Priority list](#).

Sincerely,

Michael Jacoby

Submitted by:
Min. Robert L. Campbell and David Caldwell
Rogers-Eubanks Neighborhood Association (RENA)

Representatives of the Rogers-Eubanks Neighborhood Association (RENA) in Orange County, NC would like to participate in the EPA's National Environmental Justice Advisory Council (NEJAC) public teleconference call on Thursday, September 24, 2009 from 1:00 to 4:00 pm Eastern Time. However, if it is not possible for a member of RENA to take part on the call, RENA requests that the following written public comments be submitted to NEJAC as a part of this public participation process:

Address/Telephone/E-mail: P.O. Box 16901, Chapel Hill, NC 27516-6901; Phone (Min. Robert L. Campbell): (919) 933-6210; Phone: (919) 967-4442 (David Caldwell); Email (Min. Robert L. Campbell): rplcampbell@gmail.com Email (David Caldwell): davcald778@aol.com

Description of Concern and its Relationship to a Specific Environmental Justice Policy Issue(s): Lack of basic amenities

Low-income, communities of-color straddling rural-urban unincorporated boundaries of municipalities across the United States often fall within extraterritorial jurisdiction (ETJ), joint-planning agreement (JPA), and/or industrial zoning designations that tend to concentrate locally unwanted land uses (LULUs) and psychosocial stressors, and limit access to health-promoting infrastructure¹⁻⁴. Residents of these communities are often disproportionately and adversely burdened by co-occurring environmental justice (EJ) issues such as landfills, wastewater treatment plants, Superfund sites, brownfields, toxic release inventory (TRI) facilities, hazardous waste sites, heavily trafficked highways, and concentrated animal feeding operations (CAFOs)^{1,4-13}.

Residents of these communities tend to rely on a complex mixture of unregulated private wells and septic systems and inadequate public drinking water and sewer services^{5-7,10-12}. Recently, national media attention focused on this issue during the case of Jerry R. Kennedy, et al. v. City of Zanesville, Ohio^{14,15}. Residents of Coal Run, OH, a predominately black community built on top of abandoned coal mines located just outside the Zanesville incorporated city limit, were awarded a settlement of nearly \$11 million (USD) after repeated requests for public water service were denied by local officials for more than five decades^{14,15}.

Because there is often a complex mixture of private and regulated public drinking water services in these marginalized communities, the benefits of routine federal monitoring of community water systems (CWSs) and required public notification and reporting under the Safe Drinking Water Act (SDWA) amendments of 1996 are not shared by all^{16,17}. State and local regulations of private wells and septic systems, where they exist, typically require a minimum amount of testing and monitoring (usually once at the time of construction and installation). Given the limited extent of testing and monitoring performed on drinking water and sewer services in these low-income communities of color, knowledge of the magnitude of water quality problems and public drinking water and sewer service disparities is limited. Recent research by Uhlmann et. al., (2009) examined differences in risks of sporadic enteric disease by drinking water source (groundwater vs. surface water) and type (regulated, public vs. private)¹⁸. The authors' findings of an increased risk of enteric disease among individuals living on land parcels serviced by private wells underscore the importance of improving our knowledge of the vulnerability of drinking water and sewer services in such marginalized EJ communities straddling rural-urban boundaries¹⁸.

Community-based participatory research (CBPR) has advanced popular movements for environmental justice (EJ)^{13,19-28}. The denial of basic amenities, which include regulated public drinking water service

(RPDWS), regulated public sewer service (RPSS), storm water drainage, paved roads, sidewalks, community lighting, curbside solid waste collection, access to public transit service, and emergency medical, fire, and police protection services, is being identified by community-based organizations (CBOs) in areas of North Carolina, the South, and the country as an emerging EJ issue^{9-11,29,30}.

The denial of basic amenities can be tied to historical and ongoing institutional racism^{3,9,11,14,15} and CBOs face singular challenges for data collection to encourage remedies of these issues. Residents facing this EJ issue often harbor deeply rooted mistrust of elected officials, state environmental protection agencies, local health departments, and academic researchers investigating household drinking water and sewer infrastructure problems⁹. Residents often fear condemnation of property if violations are discovered, presenting barriers to data collection to document the existence of drinking water and sewer service disparities in these marginalized and underserved communities⁹. Community-based participatory research (CBPR) has advanced popular movements for environmental justice (EJ)^{13,19-28}.

A novel community-driven research approach, that builds on the principles of CBPR stresses a community-facilitated strategy whereby the CBO maintains ownership and management at each stage of the research process, promoting CBOs with demonstrated organizational capacity to the role of principal investigator and project manager^{9,29}. Principles of community-owned and -managed research (COMR), have been described in the scientific literature^{9,29}, and go beyond traditional CBPR and other forms of university-managed communities research by emphasizing the credibility and capacity of CBOs to maintain ownership while facilitating solutions to EJ problems in a manner that preserves community trust.

This community-facilitated COMR approach was developed by the West End Revitalization Association (WERA) through its organizing efforts to preserve three low-income, African-American communities in Mebane, North Carolina, a semi-urban town of 7,284 people. WERA is now reaching out to other CBOs across NC and the United States to attempt to replicate its success using this approach. WERA's community-facilitated COMR strategy is being replicated by residents of the predominantly African-American and low-income Rogers Road/Eubanks Road communities in Orange County, North Carolina.

In 1972 when the Chapel Hill purchased 80 acres of land to site a regional landfill on Eubanks Road the surrounding area was a thriving African-American community. Politicians coaxed neighbors to accept a landfill for 10 yrs., promising no future expansion of solid waste facilities and a park and basic amenities (e.g., public regulated drinking water and sewer, garbage collection, bus service; paved roads; sidewalks; street lights). That was 37 years ago. Today, predominantly low-income and African-American, this community remains socially cohesive and culturally rich, but remains plagued by environmental hazards and threats to health and quality of life from the landfill. In 2007, residents organized, forming RENA (a 501(c)(3)) with goals of reversing decisions on expansion of solid waste operations and facilities (including but not limited to a solid waste transfer station), obtaining promised improvements (basic amenities), and protecting residents' health. RENA has begun to achieve these goals by following community-facilitated strategies to educate low-income, of-color residents, the general public, media, and politicians about on-going problems in their community. To better inform educational outreach, RENA initiated research on its own, canvassing homes and collecting air and water quality public records. In 2007, RENA identified research partners that it trusted at local universities and began to collect data to document a lack of compliance with existing environmental and public health standards and emissions from the landfill.

RENA also worked with WERA and legal partners at local universities to file an administrative complaint under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. and Executive Order 12898 of 1994 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) (DOJ#273121, HUD Case #05-08-0589-8). In its complaint RENA sought solutions to

address the following EJ-related issues experienced by Rogers Road/Eubanks Road community members; including, but not limited to:

- 1) The disproportionate and adverse impact of the siting and operation of the Orange County, NC landfill (Orange County Landfill) on Rogers Road/Eubanks Road community;
- 2) The disproportionate and adverse impact of the future plans to site a regional solid waste transfer station in the Rogers Road/Eubanks Road community going against public comments of opposition expressed by Rogers Road/Eubanks Road community members through their public participation, and input during the County's siting process;
- 3) Rogers Road/Eubanks Road community members' concerns about the lack of compliance with existing environmental and public health standards in their community; including, but not limited to:
 - a) Safe Drinking Water Act,
 - b) Clean Water Act,
 - c) Clean Air Act,
 - d) Solid Waste Disposal Act,
 - e) Toxic Substances Control Act
- 4) Rogers Road/Eubanks Road community members' concerns about the public health risks and health related quality of life effects [including, but not limited to: increased vehicular and truck traffic, foul smell and malodor, surface and groundwater contamination, animal vector carcasses and waste (e.g., feral cats and dogs, rats, and swarms of buzzards)] as a result of the siting, operation, and daily activities of the Orange County, NC landfill and future siting, operation, and daily activities of a potential Orange County, NC regional solid waste transfer station;
- 5) The disproportionate and adverse impact of contamination of groundwater, household well water supplies, and air on Rogers Road/Eubanks Road community members due to the siting and operation of the Orange County, NC solid waste landfill (which is located in the Rogers Road/Eubanks Road community) and the future siting, operation, and daily activities of the proposed Orange County, NC regional solid waste transfer station in the Rogers Road/Eubanks Road community;
- 6) The disproportionate and adverse impact of a lack of basic amenities in the Rogers Road/Eubanks Road communities; including, but not limited to the lack of:
 - a. public, regulated drinking water service,
 - b. public, regulated sewer service,
 - c. paved roads and streets,
 - d. safe traffic flow (e.g. traffic ingress/egress)
 - e. stormwater drains,
 - f. street curbs and gutters,
 - g. street lights,
 - h. sidewalks,
 - i. covered bus-stops,
 - j. public transit bus service and routes at times that would support transportation to and from extended hours and night-shift occupations (regular bus service),
 - k. adequate law enforcement to enforce traffic laws,
 - l. fire and emergency services,
 - m. voting rights to choose representation of officials responsible for decision-making in complainant's communities.

7) The disproportionate and adverse impact of zoning, services planning, and development activities performed by the Town of Chapel Hill, NC, the Town of Carrboro, NC, the Town of Hillsborough, NC, Orange County, NC, the Orange Water and Sewer Authority, and the North Carolina Department of Environment and Natural Resources related to the siting and operation the Orange County, NC solid waste landfill and future plans to site and operate the Orange County, NC regional solid waste transfer station in the complainant's community.

8) The just compensation for the residents of the Rogers Road/Eubanks Road communities for the disproportionate and adverse impact of the Orange County landfill and stopping of expansion of future solid waste landfill operations in their community; including, but not limited to the siting of a regional solid waste transfer station in the Rogers Road/Eubanks Road communities.

RENA's recommendations and desired outcomes from EPA's NEJAC in setting national enforcement priorities:

The EPA's National Environmental Justice Advisory Council (NEJAC) should consider the experiences of CBOs like WERA and RENA when setting its national priorities for enforcement to bring EJ to low-income communities of color lacking basic amenities. NEJAC should prioritize community-facilitated strategies and community-owned and managed research (COMR) that increase funding of 501(c)(3) CBOs directly. The communities that have been burdened by negative land uses and live daily with EJ problems should have an equitable share in the process to obtain long-term solutions. In setting national enforcement priorities NEJAC should consider the following:

1) Increasing federal and EPA regional funding programs like the EPA Collaborative Problem Solving Partnership and EJ small grants program to fund 501(c)(3) community-based organizations to collect community-facilitated data supporting a demonstration of the non-compliance with existing environmental and public health laws in low-income and minority environmental justice (EJ) communities. Many local, state, and federal census, surveillance, and environmental monitoring databases lack accurate and complete information on non-compliance in low-income and minority communities that have fallen through the cracks of local, state, and federal monitoring and reporting systems and programs;

2) Prioritizing the lack of basic amenities as a top national EJ issue and initiating a comprehensive review of federal, regional, state, and local zoning and planning practices that lead to the clustering of locally unwanted land uses and denial of safe drinking water and sewer and other services in low-income minority communities;

3) Providing more administrative, procedural, and legal support to environmental justice CBOs that have followed the federal Department of Justice (DOJ) administrative complaint process to obtain remedies under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. and Executive Order 12898 of 1994 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) to address the discriminatory activities of the local town governments (e.g., Rogers Road/Eubanks Road community members' DOJ complaint on actions by the Town of Chapel Hill, NC, Town of Carrboro, NC, Town of Hillsborough, NC, Orange County, NC, and the Orange Water and Sewer Authority, and the North Carolina Department of Environment and Natural Resources);

4) Developing "how-to" training materials that will provide step-by-step instructions and real-life (or case study) examples to fledgling environmental justice CBOs on how to file a Title VI complaint and collect "ground-truthing" data on environmental conditions in their communities to document non-compliance with and non-enforcement of the following environmental laws in low-income minority communities:

- a) Safe Drinking Water Act,
- b) Clean Water Act,
- c) Clean Air Act,
- d) Solid Waste Disposal Act,
- e) Toxic Substances Control Act;

5) Developing a capacity-development grants program that funds positions for Community Research Associates (CRAs) so impacted community residents with skills and the historical context of local EJ problems can work and staff environmental justice CBOs with 501(c)(3) status. This will further support CBOs capacity to collect data with identified and trusted research partners (e.g., scientists, engineers, attorneys, planners, public health professionals) that can lead to more information about compliance with and enforcement of the following environmental laws in low-income minority communities:

- a) Safe Drinking Water Act,
- b) Clean Water Act,
- c) Clean Air Act,
- d) Solid Waste Disposal Act,
- e) Toxic Substances Control Act

Specific to the historical EJ movement of RENA and Rogers Road/Eubanks Road community members in Orange County, NC

The NEJAC should support federal and regional EPA staff (including staff within the federal Office of Compliance and Enforcement and Region IV Office of Compliance Assistance and Enforcement) involvement to work to resolve issues including, but not limited to:

1) Ensuring that the Town of Chapel Hill, NC, Town of Carrboro, NC, Town of Hillsborough, NC, Orange County, NC, and the Department of Environment and Natural Resources do not approve decisions to site, permit, or place future solid waste facilities (including but not limited to a solid waste transfer station) in the Rogers Road/Eubanks Road communities;

2) Encouraging the Town of Chapel Hill, NC, Town of Carrboro, NC, Town of Hillsborough, NC, Orange County, NC, the Department of Environment and Natural Resources to conduct a lawful and thorough site selection process for a site for any future solid waste transfer station that excludes the Rogers Road/Eubanks Road communities from their search process (in part because of the 37 years the community has been burdened with the County's solid waste disposal activities);

3) Encouraging the Towns of Chapel Hill, NC, Carrboro, NC, Town of Hillsborough, NC, Orange County, NC, the Department of Environment and Natural Resources and the NC Department of Commerce (Community Development Block Grants Program) to fund connection of Rogers Road/Eubanks Road community households to basic amenities; including, but not limited to:

- a. public, regulated drinking water service,
- b. public, regulated sewer service,
- c. paved roads and streets,
- d. improving safe traffic flow (e.g. reducing speed limits on community roads, traffic ingress/egress)
- e. stormwater drains,
- f. street curbs and gutters,
- g. street lights,
- h. sidewalks,

- i. covered bus-stops,
 - j. public transit bus service and routes at times that would support transportation to and from extended hours and night-shift occupations (regular bus service),
 - k. adequate law enforcement to enforce traffic laws,
 - l. fire and emergency services,
 - m. voting rights to choose representation of officials responsible for decision-making in complainant's communities.
- 3) Encouraging the Town of Chapel Hill, NC, Town of Carrboro, NC, Town of Hillsborough, NC, Orange County, NC, the Department of Environment and Natural Resources to begin the process of closing the Orange County, NC solid waste landfill and remediating the site and surrounding areas to address issues including, but not limited to groundwater contamination and malodor and air quality problems in the Rogers Road/Eubanks Road communities.

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